



Michael "Mike" Couvillon

VERMILION PARISH
SHERIFF & EX-OFFICIO TAX COLLECTOR
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December 11, 2020

Kathleen Allen
Louisiana Board of Ethics, Administrator
617 North Third Street
LaSalle Building, Suite 10-36
Baton Rouge, LA 70802

RE: REQUEST FOR ADVISORY OPINION

Dear Kathleen:

I am the Sheriff of Vermilion Parish. I am requesting an Advisory Opinion on whether I may use funds in my campaign account to pay legal fees incurred in defense of an ethics complaint. The complaint (Agency Tracking: 2014-762, Docket No. 2015-9963) alleged that I violated La. R.S. 42:1112 and La. R.S. 42:1113 by purchasing property through public auction in Vermilion Parish. Before I purchased the property at auction, I got the written opinion of a lawyer that I would not violate state ethics laws by purchasing property at public auction. With this advice, my attorney went to the public auction and bid on the property. He was the low bidder. The Board filed an ethics complaint against me.

I know that I did not do anything wrong. I hired a law firm to defend me. I defended the complaint through my lawyers. I understood from my lawyers that we had a very strong legal position. Eventually, my lawyers filed a motion to have the complaint dismissed. While we were waiting for the hearing on this motion, I decided to try to settle the complaint. I was tired of the process, tired of spending money on lawyers, and ready to move on. I eventually agreed to a Consent Order to resolve the complaint.

The Board allowed me to state my specific reason for agreeing to the Consent Order, in the body of the Consent Order. That specific reason was "*to resolve all the charges brought by the Louisiana Board of Ethics against Sheriff Michael Couvillon on July 16, 2015 in the matter under Docket No. 2014-762 and to avoid the uncertainties and high cost of attorney's fees in litigating this matter.*" I did not admit to any wrongdoing. I did not do anything wrong or unethical.

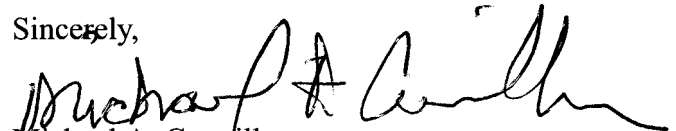
The Board had me pay \$2,500. I paid the \$2,500 in full. I wanted to pay this amount to end the process rather than to keep paying lawyers.

La. R.S. 18:1505.2(I) allows public officials to spend campaign contributions for any lawful purpose related to the holding of public office. My legal fees to defend the judicial sale complaint were directly related to my holding of office and paying them is lawful. I should be

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able to pay them with funds in my campaign account. Can you please issue an advisory opinion on whether it is safe for me to pay my legal fees resulting from my defense of the judicial sale complaint?

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Couvillon". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Michael A. Couvillon
Sheriff, Vermilion Parish

MAC/ jgm

**December 11, 2020
VIA U.S. MAIL**

**Kathleen Allen
Louisiana Board of Ethics, Administrator
617 North Third Street
LaSalle Building, Suite 10-36
Baton Rouge, LA 70802**

**RE: Letter Memorandum in Support of Request for Advisory Opinion
by Vermilion Parish Sheriff, Michael Couvillon**

Dear Kathleen:

On behalf of Vermilion Parish Sheriff, Michael Couvillon, ("Sheriff" or "Sheriff Couvillon") we offer this letter memorandum to support his request for an advisory opinion. The memorandum is organized into four main headings: Issues for Consideration, Background, Law and Analysis, and Conclusion.

Issues for Consideration

Under the Louisiana Code of Ethics,¹ a public official may use campaign funds for any lawful purpose related to the holding of public office. To determine whether the Sheriff may properly pay legal fees with his campaign funds, the Board must consider the following two issues and corresponding questions.

- 1. Lawful purpose.** Under Louisiana law, legal services are lawfully contracted for. Fees from services performed under an engagement for legal services are lawful debts. The payment of such fees has a lawful purpose—paying legal fees. Here, the Sheriff incurred legal fees under an engagement for legal services.
- 2. Related to the holding of public office.** Under La. R.S. 13:1505.2(I), an expenditure relates to the holding of office when it's purpose—in any sense—relates to the officeholder's public status. Here, the Sheriff's legal fees are directly related to his status as a public officeholder: but-for that status, these legal fees would not exist.

¹ La. R.S. 18:1505.2

Background

In July 2014, the Board voted to file an ethics complaint against Sheriff Couvillon. The process continued against the Sheriff, and the following year, the Board filed formal ethics proceedings against the Sheriff.² The basis of those proceedings: that the Sheriff directed his lawyer to attend and bid on property at a judicial sale and that his lawyer was the winning bidder on one property. The Board alleged that through these actions, the Sheriff violated La. R.S. 42:1113, which prohibits public officials from entering into transactions under the supervision or jurisdiction of their agencies. The Sheriff disagreed with and strongly disputed the allegations, maintaining that his actions were covered under the Louisiana Supreme Court's recognized "routine and mechanical" function exception to La. R.S. 42:1113.³

In disputing the formal ethics charges, the Sheriff highlighted facts that he believed exonerated him: The judicial sale was under the supervision and jurisdiction of the district court, not the Sheriff. The role played by the Sheriff in judicial sales is statutorily dictated and cannot be deviated from. The Sheriff sent a lawyer to a judicial sale to bid on property. The lawyer bid on property, and was successful. The Sheriff was not present at the sale. The Sheriff did not participate in the sale. The fact that the winning bid was made on behalf of the Sheriff was not made known until after the bid was final. The actions of a Sheriff's employee administering a judicial sale are, at their core, routine and mechanical. The Sheriff could not affect the outcome of the sale, except by bidding, just like all the other bidders. His absence from the judicial sale ensured his presence would not influence other bidders. He obtained an independent legal opinion before having his lawyer bid at the judicial sale.

In March of 2016, the Sheriff filed a Motion for Summary Judgment citing these facts against the backdrop of Louisiana Supreme Court jurisprudence⁴ and two of the Board's opinions.⁵ The Sheriff never waived in maintaining his innocence. But leading up to the summary judgment hearing, he had grown weary of litigation: It was costly. It was stressful. The longer the litigation lasted, the greater the Sheriff's costs and stresses became. He wanted relief and hoped that the summary judgment would give him that relief. Though he tempered this hope with the knowledge that no matter how strong the summary judgment argument was, the judge may view it differently, meaning even more costs and stresses—and no definite end.

² Docket No. 2015-9963-ETHICS-A

³ *Hill v. Commission on Ethics for Public Employees*, 453 So.2d 558, 562 (La. 1984)

⁴ *Id.*

⁵ See: No. 2000-481 (A parish councilperson could hold an occupational license from his parish, even though the council reviewed the applications.); No. 1998-409 (The mayor of a town could own a video poker establishment when his town licensed and taxed video poker establishments.)

As the summary judgment hearing approached, Sheriff Couvillon considered a practical opportunity. He took that opportunity by negotiating and agreeing to a Consent Order. He got the relief he desired and was able to state his reasons for agreeing without admitting unethical conduct. The Consent Order states the Sheriff agreed to settle to “avoid the uncertainties and high cost of attorney’s fees in litigating this matter.” The Sheriff to pay a \$2,500 fine.

Sheriff Couvillon was represented by counsel throughout the process, including the litigation leading up to the Consent Order. He incurred legal fees and expenses through that representation. Now, with practicality in mind, Sheriff Couvillon seeks the Board’s opinion on whether under the campaign finance law, he may pay these legal fees from his campaign account. We respectfully suggest that he can.

Law and Analysis

Provisions of the campaign finance law, including La. R.S. 18:1505.2(I), must be strictly construed against enforcement and resolved with lenity in favor of the individual (the “Rule of Lenity”). Under the Rule of Lenity, a law must not be interpreted to extend powers unauthorized by its letter, even if such powers are arguably within its spirit.⁶ Under La. R.S. 18:1505.2(I), a public official or candidate may use campaign contributions for any lawful purpose related to the holding of a public office.

In this letter memorandum, the “Sheriff’s Payment” means Sheriff Couvillon’s payment of legal fees relating to his defense of the Complaint with funds from his campaign account.

We pose two questions: (1) Under the Rule of Strict Construction and Rule of Lenity, does the Sheriff’s Payment have “a lawful purpose”? (2) Under the Rule of Strict Construction and Rule of Lenity, does the Sheriff’s Payment relate to the holding of public office?

- 1. The Sheriff’s Payment would satisfy obligations under an engagement for legal services. Satisfying obligations under an engagement for legal services is lawful.**

The purpose of satisfying obligations for fees incurred under an engagement for legal services is lawful. Here, under our office’s customary engagement for legal services, Sheriff Couvillon became obligated to pay for fees and expenses incurred under the engagement. Fees and expenses were lawfully incurred under the engagement. Under La. R.S. 18:1505.2(I), the Sheriff’s Payment has “a lawful purpose.”

⁶ *Ellis v. Louisiana Bd. of Ethics*, 2014-0112 (La.App. 1 Cir. 12/30/14, 13), 168 So.3d 714, 724, *writ denied*, 2015-0208 (La. 4/17/15), 168 So.3d 400.

2. **Sending a lawyer to bid on property at a judicial sale is lawful. The Sheriff's holding of public office is the only reason he incurred legal fees. Payment of those fees is necessarily related to the holding of public office.**

The Complaint alleged that the Sheriff participated in a prohibited transaction by sending a lawyer to bid at a judicial sale when the lawyer was the winning bidder for one property. The Sheriff asserted a common-sense defense grounded in strong legal reasoning. Eventually, because of his desire to stop the ever-mounting costs and stresses associated with the litigation, the Sheriff agreed with the Board to a Consent Order. In that Consent Order, Sheriff Couvillon stated his reasons for agreeing to it: He did not admit to ethical wrongdoing; rather, he admitted that he agreed to the Consent Order because of the high cost and uncertainties of the litigation. Considering the law and interpretive jurisprudence, the Sheriff's Payment is related to the holding of office.

Under La. R.S. 18:1505.2(I), "related to the holding of office" means *any* relation to the holding of office, even the broadest of relations. As recently as 2013, the First Circuit interpreted La. R.S. 18:1505.2(I) to determine whether payments with an elected official's campaign funds were "related to the holding of office." The court analyzed three separate payments:

- i. a payment to a constituent to assist with the funeral of a family member;
- ii. a payment to the Congressional Youth Leadership Council; and
- iii. a payment to the People to People Ambassadors Program.

Under the First Circuit's interpretation of La. R.S. 18:1505.2(I), funeral expenses and payments to two private organizations were indeed related—albeit indirectly—to the holding of public office.⁷

Here, the Sheriff's Payment directly relates to the holding of public office—more so than funeral expenses and payments to private organizations do. The Sheriff sent his lawyer to a judicial sale to bid on property, and his lawyer was high bidder. The judicial sale was a statutorily mandated, routine and mechanical function. The Sheriff was statutorily mandated to conduct judicial sales just as he is statutorily mandated to collect property taxes. The high bidder prevails at a judicial sale, and the Sheriff collects assessed taxes. The Sheriff does not have the authority or power to do otherwise.

The identities of bidders at a judicial sale are inconsequential—even if the bidder or taxpayer is a sheriff. Sheriff Couvillon's administration discharging its statutory duties for a judicial sale (as Sheriff) and his lawyer placing the winning bid at a judicial sale (as a citizen bidder)—are analogous—to his administration collecting property taxes (as Sheriff) from himself (as a citizen property-owner). In both cases, the fact that the Sheriff took part in the process is

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La. Bd. of Ethics v. Holden, 12-1127 (La.App. 1 Cir. 6/25/13), 121 So.3d 113

inconsequential and not prohibited. Louisiana law simply does not afford the Sheriff any discretion in how judicial sales or the collection of taxes are conducted.

The Sheriff's holding of office is the sole reason why he faced and was forced to defend the Ethics Complaint. The Sheriff's Payment would not exist but-for Sheriff Couvillon's holding of public office. Because a "but-for" relation and a "direct relation" are synonymous, the Sheriff's Payment is directly related to the holding of office.

The following opinions of the Board bolster this conclusion:

In Opinion No. 2002-819 [under La. R.S. 18:1505.2(I)] the Board advised that an elected sheriff may use funds in his campaign account to pay legal fees incurred through his defense of a federal investigation of his alleged acceptance of bribes; because, "the federal investigation concerned [his] activity as a public official..." There, the Board opined that payment of legal fees were related to the holding of public office and proper under La. R.S. 18:1505.2(I). Here, the Sheriff's Payment is more closely related to the holding of office than the payment of legal fees in opinion 2002-819. Sheriff Couvillon was not suspected of criminal wrongdoing—the other sheriff was. If this other payment of legal fees was proper under La. R.S. 18:1505.2(I), the Sheriff's Payment is proper.

In Opinion No. 2015-785 [under La. R.S. 18:1505.2(I)] the Board advised that a candidate may use campaign funds to pay legal fees incurred in defending a challenge to a candidate's residency. There, residency was a requirement for the candidate to run for office. Here, administering judicial sales in accordance with statute is a requirement of the Sheriff's administration.⁸ There, the candidate incurred legal fees to defend allegations that he violated the Election Code. Here, Sheriff Couvillon incurred legal fees to defend allegations that he violated the Ethics Code. There, the Board determined that the candidate's defense of a residency challenge was related to his campaign. Here, Sheriff Couvillon's defense of the Complaint—is related to his holding of public office.

In Opinion No. 2007-326 [under La. R.S. 18:1505.2(I)] the Board advised that a parish president may use campaign funds to pay legal fees for responding to a Legislative Auditor's investigation. There, the officeholder was investigated for violations of public finance law. Here, Sheriff Couvillon was investigated for violations of the Ethics Code. There, the Board found that the officeholder's response to the investigative audit was part of his "activities as parish president." Here, Sheriff Couvillon's defense to the complaint is part of his "activities as sheriff."

In Opinion No. 2005-011 [under La. R.S. 18:1505.2(I)] the Board advised that a district attorney could use funds in his campaign account to pay legal fees incurred in defending a

⁸ Administration of judicial sales is also a routine and mechanical function of the Sheriff's administration.

discrimination lawsuit filed by former employees. There, a jury found the district attorney illegally discriminated against his employees after taking office: more than 3.5 million dollars in damages were upheld on appeal. Here, the Sheriff agreed to a Consent Order and paid \$2,500. If La. R.S. 18:1505.2(1) did not prohibit the district attorney from using campaign funds to pay legal costs, Sheriff Couvillon should be allowed to use campaign funds to pay his legal costs.

Conclusion

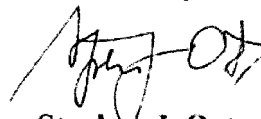
As Justice Felix Frankfurter aptly stated: "Litigation is the pursuit of practical ends, not a game of chess."⁹ Sheriff Couvillon defended himself, litigated, and pursued practical ends; he found one practical end through the Consent Order. A plain interpretation of La. R.S. 18:1505.2(1) points to another practical end—approval of the Sheriff's use of campaign funds to pay legal bills.

The Rule of Strict Construction and the Rule of Lenity require interpretation of La. R.S. 18:1505.2(1) in favor of Sheriff Couvillon.¹⁰ The First Circuit interpreted La. R.S. 18:1505.2(1) to allow funeral expenses and two payments to private organizations: payments peripherally related, in the "broadest sense," to the holding of office.¹¹ If only a peripheral relation is required, a direct relation will suffice. Here, a direct relation exists between the Sheriff's Payment and the holding of office: but-for Sheriff Couvillon's holding of office the Sheriff's Payment would not exist. The Sheriff's Payment is logically, practically, and legally related to the holding of office under La. R.S. 18:1505.2(1).

With kindest regards, we remain,

Sincerely,

OATS & MARINO
A Partnership of Professional Corporations



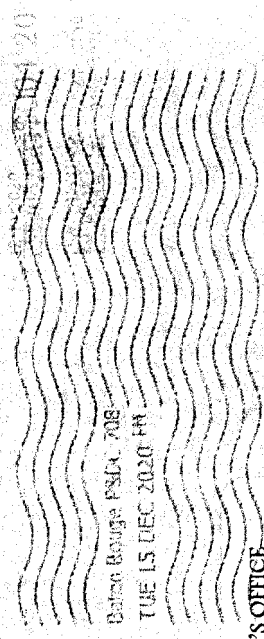
Stephen J. Oats

SJO/cmm

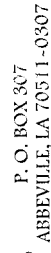
⁹ *Indianapolis v. Chase National Bank, Trustee*, 314 U.S. 63, 62 S.Ct. 15, 86 L.Ed. 47, *reh den* 314 U.S. 714, 62 S.Ct. 355, 356, 86 L.Ed. 569 (1941)

¹⁰ See *Ellis v. Louisiana Bd. of Ethics*, 168 So.3d 714, 724

¹¹ *La. Bd. of Ethics v. Holden*, 12-1127 (1.a.App. 1 Cir. 6/25/13), 121 So.3d 113



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